



MISSOURI DEPARTMENT OF MENTAL HEALTH

KEITH SCHAFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
8.140

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| CHAPTER Regulatory Compliance | SUBCHAPTER HIPAA Regulations | EFFECTIVE DATE 6/17/15 | NUMBER OF PAGES 3 | PAGE NUMBER 1 of 3 |
| SUBJECT HIPAA Complaint Process | | AUTHORITY 45 CSR Section 164.502 et seq | History See Below | |
| PERSON RESPONSIBLE General Counsel | | | Sunset Date 7/01/18 | |

PURPOSE: It is the policy of the Department of Mental Health (DMH) to provide consumers with the means to file a complaint if they believe that their protected health information (PHI) has been improperly used or disclosed. See 45 CFR Section 164.530(d)(1).

APPLICATION: DMH, its facilities and workforce.

(1) DEFINITIONS: As used in this operating regulation, the following terms shall mean:

(A) **Complaint:** Allegation that a consumer's protected health information has been improperly used or disclosed. A consumer may file a complaint, or a legal guardian or personal representative or a parent, if a minor, may file the complaint. The original complaint form is to be placed in the consumer's medical record. If the consumer has a guardian, a copy of the complaint shall be sent to the guardian, and the consumer should be notified that such action has occurred.

(B) **Consumer:** Any individual who has received or is receiving services from the Department of Mental Health.

(C) **Protected Health Information (PHI):** Individually identifiable health information that is transmitted or maintained in any form or medium, by a covered entity, health plan or clearinghouse as defined under the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Parts 160 and 164.

(2) PROCEDURE: DMH strongly encourages, and wishes to promote that consumers and service providers discuss and attempt to resolve issues in the most direct and informal manner and at the local level. The following steps constitute the HIPAA complaint process.

(A) Utilize standardized DMH HIPAA "Privacy Complaint Form".

(B) Forward a copy of the "Privacy Complaint Form" to the facility Privacy Officer or designee if the alleged violation took place at the facility, or to the DMH Privacy Officer or designee, if the alleged violation took place at the Central Office level.

(C) The HIPAA "Privacy Complaint Form" shall include the following information:

1. a description of acts or omissions the consumer believes to have occurred;
2. the date on which the alleged act or omission occurred;
3. a description of the PHI affected and how it was affected; and



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4. the name(s) of anyone who may have improperly been provided with the PHI.

(D) All Privacy Complaints received by the Privacy Officer or designee shall be date-stamped upon arrival.

1. The Privacy Officer or designee shall review and act on the complaint in a timely manner and not more than thirty (30) days from receipt of the complaint. If greater time is necessary to review and investigate the complaint, the Privacy Officer or designee shall, within thirty (30) days, notify the consumer of the delay, and inform the grievant of the expected timeframe for completion of the review.

2. The Privacy Officer or designee shall determine what PHI is affected by the complaint and if the PHI was provided to other covered entities and business associates.

3. If the affected PHI was created and maintained by a business associate, the complaint shall be forwarded to the business associate as outlined in the Business Associate Agreement. Complaints forwarded to business associates shall be logged and a notice of the action sent to the consumer making the complaint.

(E) The Privacy Officer or designee shall determine if there is cause to believe that a violation of privacy department operating regulations occurred, and the course of action to be taken.

1. If no violation has occurred the complaint and finding shall be date-stamped, the complaint will be considered closed and a written notice of this shall be provided to the consumer.

2. If cause exists to believe that a violation has occurred, the Privacy Officer or designee shall be responsible for determining if:

a. performance or training need to be improved and
b. whether a recommendation to change an existing department operating regulation or for a new department operating regulation should be forwarded to the DMH Privacy Officer.

3. The Privacy Officer or designee shall notify the appropriate administrators, staff or committees of the action needed.

4. If employee discipline must be taken, it shall follow the department operating regulation on HIPAA sanctions, and shall be initiated by the appropriate appointing authority.

(F) If the complaint resolution finds that no cause exists to believe a violation occurred, then the consumer may seek an additional review from the DMH Privacy Officer (if it is a facility based complaint).

1. The consumer, through completion of the "Privacy Complaint Form," shall request that the facility Privacy Officer or designee forward the complaint to the DMH Privacy Officer.

2. The DMH Privacy Officer shall review and act on the complaint in a timely manner and not more than thirty (30) days from receipt of the complaint form.



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(G) The DMH Privacy Officer shall determine one of the following.

1. That the original determination of the facility Privacy Officer is accurate.
2. That remediation should occur at the facility level through increased training, or that a recommendation is made to the facility appointing authority for possible disciplinary action.
3. That a recommendation for department operating regulation review be initiated at the Central Office level.
4. That a recommendation be made for the establishment of a new department operating regulation.

(I) The complaint form shall be placed in the consumer's medical record.

(2) RETENTION: The facility Privacy Officer or designee, or the DMH Privacy Officer or designee's primary responsibilities in the HIPAA Complaint process include logging and retaining complaints in a retrievable manner for a minimum of six (6) years, and identifying:

- (A) Person or entity making the complaint;
- (B) Date complaint was received;
- (C) A list of what PHI was affected;
- (D) Status of complaint;
- (E) A list of business associates or facilities affected; and
- (F) Actions taken.

(3) There shall be no retaliation against any consumer, or against a workforce member for assisting a consumer to file a HIPAA "Privacy Complaint Form."

(4) LOCAL POLICIES: There shall be no local policies on this topic. The Department Operating Regulation shall control.

(5) SANCTIONS: Failure to comply or assure compliance with this DOR shall result in disciplinary action, up to and including dismissal.

(6) REVIEW PROCESS. Information shall be collected from the facility Privacy Officers annually to monitor compliance and identify any issues with this DOR.

(7) ATTACHMENT: Privacy Complaint Form.

History: Emergency DOR effective January 15, 2003. Final DOR effective June 1, 2003. Amendment effective July 1, 2006. On July 1, 2009, the sunset date was extended to July 1, 2012. On June 12, 2012, the sunset date was extended to July 1, 2015. Amendment effective June 17, 2015.



**STATE OF MISSOURI
DEPARTMENT OF MENTAL HEALTH
PRIVACY COMPLAINT FORM**

Consumer Name:

Statewide ID/Local ID Number

Consumer Address

Today's Date:

Date acts or omissions are believed to have occurred:

Description of the acts or omission believed to be in violation of privacy.

Please describe the Protected Health Information affected.

Do you know of anyone who may have received the PHI? YES _____ NO _____

If so, please specify the name and address of the organization or individual:

Signature of Consumer or Legal Representative

Date

Missouri Department of Mental Health Use Only

___ No Violation Occurred

___ Possible Violation, and Remedial
Action Needed

___ Changes need to be made to existing
DORs

___ New DORs need to be created

POSSIBLE APPEAL, IF FACILITY BASED COMPLAINT

___ Yes ___ No (check one) I disagree with the resolution, and I request that this complaint be forwarded to the Central Office Privacy Office for review.

Signature of Consumer or Legal Representative

Date

Date Received in Central Office